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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,381	03/19/2004	Scott Edward Osborne	7892C	7237

27752 7590 11/03/2004

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
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EXAMINER

CHANNAVAJALA, LAKSHMI SARADA

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 11/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/804,381	Applicant(s) OSBORNE ET AL.	
	Examiner Lakshmi S Channavajjala	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3-19-04</u> . | 6) <input type="checkbox"/> Other: ____ |

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DETAILED ACTION

Claims 1-20 are pending.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-13 are rejected under 35 U.S.C. 102(b) as being anticipated by USPN 5,614,178 to Bloom et al.

Bloom discloses compositions for topical application containing a high molecular weight polymer, a non-ionic surfactant having a high HLB (above 6) for enhanced penetration of through skin. The transdermal administration disclosed by Bloom meets the requirements of the instant release system. (See col. 3, lines 7-16) a number of drugs or active agents, disclosed by Bloom read on the instant skin care actives and are known to be water soluble. Example ascorbic acid in col. 9, lines 42. For others, see col. 4, lines 56-68; cols. 5-9; non-ionic surfactants with HLB above 3 are disclosed in col. 11, lines 48 through col. 12, which includes the surfactants of instant claims 7-9. Bloom discloses humectants, fatty alcohols and other ingredients in col. 14 and also in examples. The lotions and creams of Bloom (col. 14, last line) read on semi-solid composition of the instant composition. Although Bloom does not explicitly state “an article”, the transdermal teaching of Bloom include the article for administering their active agents. Accordingly, applying the transdermal product containing the composition is also inherent.

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Alternatively, an article is inherent to the teachings of Bloom for dispensing creams and lotions (such as tubes or pump dispensers).

2. Claims 1-7 and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,650,157 to Bockow.

Bockow discloses stable pharmaceutical compositions for topical application. The compositions of Bockow described in the examples comprise aloe vera, eucalyptus oil, glycerin monostearate, which read on the instant active agent, emollients and non-ionic surfactants. The percentages of the above components are also within the claimed ranges. Therefore, Bockow anticipates instant claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bloom et al by itself or Bloom by itself or Bloom in view of EP 297 828 (EP).

Bloom discussed above, does not specifically state the various articles for dispensing the composition. However, as mentioned above dispensing the composition to the skin is inherent to

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the teachings of Bloom, especially such as pump dispensers for lotions. Alternatively, Bloom suggests transdermal application of their compositions and it is well known in transdermal art to use bandages or pads containing skin care active agents for efficient penetration through skin (col. 3, lines 7-16).

EP teaches a medicated dressing or bandage for topical application of bioactive agents in the form of a fabric or a pad and is coated or impregnated with the active ingredient in a soft or waxy vehicle, such that the active is released to the skin. The vehicle of EP comprises natural wax, petrolatum or other synthetic waxes; and the active agent may be an antibacterial or anti-inflammatory agent or anesthetic (page 3). The bandage of EP is made of a nonwoven or woven fabric (page 3).

Accordingly, it would have been obvious for a skilled artisan at the time of the instant invention to employ a pad, bandage or other appropriate means to apply the composition of Bloom because EP suggests that topical delivery of medicaments can be targeted precisely to the desired location and an efficient release of the active agents through the skin occurs upon local application and at the same time provides a sterile covering over the area of application.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground

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provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

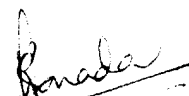
Claims 1-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of U.S. Patent No. 6,716,441. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claims directed to an article and a method of effectively delivering one or more skin care actives recite specific active agents and release agents, which are encompassed by the broadly recited release agents and skin care actives of the instant claims. The specific release composition of the patented claims anticipates the broad genus claimed in the instant invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S Channavajjala whose telephone number is 571-272-0591. The examiner can normally be reached on 7.30 AM -4.00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K Page can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Lakshmi S Channavajjala
Examiner
Art Unit 1615
November 1, 2004